CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I
Date of hearing/Decision:20.03.2018

Appeal No. E/11/2012-Ex

(Arising out of OIO No.19/2011 dt.22.9.2011 passed by the CCE, Ludhiana)

M/s. Kanin (India) **Appellant**

Vs.

CCE, Ludhiana **Respondent**

Present for the Appellant: Shri B.L.Narsimhan, Advocate
Present for the Respondent: Shri H.Singh, AR

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Anil G.Shakkarwar, Member (Technical)

FINAL ORDER NO. 62326/2018

PER: ASHOK JINDAL

The appellant is in appeal against the impugned order wherein the demand of duty of Rs.84,90,188/- along with interest has been confirmed and equivalent amount of penalty imposed on the appellant for the period April, 2007 to April, 2010.

2. The facts of the case are that the appellant is engaged in the manufacture of staplers which are liable to pay duty in terms of Section 4A of Central Excise Act, 1944 i.e. on MRP bases assessment. Therefore, the appellant is clearing these staplers on payment of duty in terms of Section 4A of the Act. During the period in dispute, a promotional scheme offered to its dealers. As per the said scheme, the appellants also cleared staple pins of specified quantity along with staplers manufactured in their factory. The value of these staple pins were included in MRP of the stapler cleared by the appellants. In

other words, these staple pins were given free of cost along with staplers manufactured and cleared by the appellant. The appellants procured these staple pins from other manufacturers and no repacking or relabeling is done by the appellant. These staple pins are also not packed in the same unit container along with stapler machines. The stapler and stapler pins were cleared in different master cartons, however, sometimes when the quantity is less, then these staplers and staple pins may be cleared in the same master carton only for the purpose of transport. These stapler and stapler pins are cleared in separate boxes. These staple pins are purchased from M/s. Kangaro Industries Ltd., Unit-II, Sahnewal on payment of appropriate duty and and without payment of duty from Nalagarh unit-III as the unit is availing exemption under Notification No.49-50/2003-CE (area based exemption) from payment of duty. Based on investigation, show cause notice was issued to the appellant in terms of para 4 (ii) of CBEC Circular No.673/64/2002-Cx dated 20.10.2002. Thereafter adjudication took place and demand was confirmed along with interest and equivalent amount of penalty was imposed on them. Against the said order, the appellant has filed appeal before us.

3. Ld. Counsel for the appellant submits that the appellant has correctly discharged appropriate duty on stapler manufactured and cleared by them and the value of staple pins is not required to be included in the value of stapler. It is his contention that staple pins procured by the appellant from outside manufacturers as the appellant has not manufactured staple pins. The manufacturers of these staple pins have already discharged the duty thereon or cleared

these goods availing the benefit of exemption notification from duty. The staple pins procured by the appellants are finished goods and in a marketable condition on which excise duty has been paid. No process incidental or ancillary to the completion of manufactured product was undertaken by the appellant, nor is there any Chapter note creating legal fiction of manufacture. Therefore, requirement of clause (i) and (ii) of Section 2 (f) of the Act are not fulfilled. Further, neither any packing nor repacking of these staple pins in any unit container nor labelling or re-labelling of the containers nor the declaration or alteration of retail sale price nor any other treatment on the goods to render them marketable was undertaken by the appellant and the appellant is not manufacturer of these staple pins. Therefore, requirements of clause (iii) of Section 2(f) of the Act are also not fulfilled. Therefore, the activity undertaken by the appellant does not amount to manufacture and the appellant is not the manufacturer of these staple pins. Therefore, the appellant is not liable to pay duty on the staple pins cleared from the factory. The case of the Revenue is that MRP printed on the staple pins is required to be added by the appellant for the purpose of assessment and valuation.

4. It is his submission that the value of staple pins stands included in the MRP of staplers cleared from the factory of the appellants. He submits that the value of these staple pins has already been included in the value of the stapler manufactured and cleared from the factory of the appellant, on which appropriate duty has been discharged by the appellant and nothing over and above the price of stapler is recovered by the appellant from the buyers and this is fact on record that the value of stapler is inclusive of the value of staple pins. In

that circumstance, the appellant is not liable to pay any duty on the value of staple pints or the value staple pins are not to be included in the value of stapler. To support his contention, he relied on the decision of Hon'ble Supreme Court in the case of CCE vs. Himalaya Drug Company-2015 (324) ELT 9 (SC), CCE vs. Himalaya Drug Company-2009 (243) ELT 101 (Tri—Bang.), Himalaya Drug Company vs. CCE-2006 (195) ELT 109 (Tri.-Bang) and Surya Food & Agro Ltd. vs. CCE-2003 (156) ELT 488 (Tri.-Del.).

5. He further submits that the value of bought out staple pins is not to be included in the assessable value of staplers cleared as held by the Hon'ble Apex Court in the case of Essel Propack Ltd. vs. CCE, Mumbai-III- 2011 (274) ELT 3 (SC).

6. He further submits that the reliance paced by the Revenue on the CBEC Circular No.673/64/2002-Cx dated 20.10.2002 is not applicable to the facts of this case as the said circular provide the value with regard to the valuation of multi-piece package and definition of multi-piece package as per Rule 2 (j) of Standards of Weights and Measures (Packaged Commodity) Rules, 1977.

7. It is further submits that the whole of duty demand barred by limitation as the show cause notice was issued by invoking the extended period of limitation. There is no ground for suppression, fraud or wilful mis-statement.

8. On the other hand, Ld.AR reiterated the findings of the impugned order.

9. In this case a short issue involved is whether the appellant is required to pay duty on the basis of MRP on the bought out staple pins cleared in separate master cartons from the factory of the appellant, supplied free of cost with the stapler manufactured by the appellant.

10. We find that the case is made out against the appellant on the basis of para 4 (ii) of CBEC Circular No.673/64/2002-Cx dated 20.10.2002. For better appreciation, the same is reproduced herein below:-

> "if the individual items do not contain any such inscription (that they are not to be sold separately) and are capable of being sold separately at the MRP printed on the individual pieces, then the aggregate of the MRP's of the pieces comprising the multi-pack would be considered for payment of duty on the multi-pack under section 4A. This clause will apply to only those multi-packs where the MRPs, both on the multi-pack and **each** of the individual items comprising the multi-pack, are clearly visible (e.g. soaps, powders, tooth pastes etc.). Only then can Explanation 2(a) to section 4A apply."

11. The said circular is applicable in terms of Explanation 2 (a) to section 4A of the Central Excise Act, 1944 and para 5 of Multi-piece Package. Rule 2 (j) of Standards of Weights and Measures (Packaged Commodity) Rules, 1977 prescribed the definition of multi-piece package during the relevant period which is reproduced as under:-

"(j) "multi-piece package" means a package containing two or more individual packaged or labelled piece of the same commodities of identical quantity, intended for retail sale, either in individual piece or the package as a whole"

12. On going through the said definition, we find that the multi-piece package means a package containing two or more individual

packaged or labelled pieces of the same commodities of identical quantity, intended for sale. Admittedly, stapler and staple pins are different commodities and the staple pins were given free along with staplers, in that circumstance, it cannot be termed it as two or more individual packaged or labelled pieces of the same commodity or identical quantity are packed in the present case. In fact, stapler and staple pins even not cleared in single package or unit container and these are also not cleared together in single carton. In that circumstance, it cannot be said that these goods cleared in multi-piece package. Therefore, para 4 (ii) of CBEC circular No. Circular No.673/64/2002-Cx dated 20.10.2002 is not applicable to the facts of this case.

13. We further find that the staple pins are not manufactured by the appellant by the appellant these are bough out items and it is a fact on record that the appellant has not manufactured staple pins and these staple pins are supplied by the appellant free of cost. We further find that Hon'ble Apex Court in the case of Himalaya Drug Company-2015 (324) ELT 9 (SC) wherein the Hon'ble Apex Court has held as under:-

> **4.** It is clear from the reading of sub-section (2) of Section 4 along with Explanation thereto that the MRP mentioned is to be the sole consideration in arriving at the transaction value at which the excise duty is payable. We are, therefore, of the view that the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'CESTAT') has rightly decided the issue. The discussion in the order of the CESTAT is contained in paragraph 7 which reads as under : -
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> "We have gone through the records of the case carefully. The appellants receive the gel and the shampoo in bulk and repack them in retail packages. Thereafter, the shampoo along with the free gel is bound together and the label is fixed on the product. We agree with the contention of the appellant that this process amounts to manufacture as per Chapter Note 5 to Chapter 33. Further, it is seen that both the products are

> covered under Section 4A and Standards of Weights and Measures Act. The ratio of *Oswal Fats and Oils Limited* (supra) is squarely applicable, in that case binds were packed along with soaps for free supply to buyers of soap. It was held that the additional package of bindis had no connection to the price of soap, the price of bindis is not includable in the assessable value of soap. In the *Surya Foods Ltd.* v. *CCE* (supra) and cited supra, it was held that when selling certain quantities of biscuits, the appellant supplied small quantities of certain other varieties free and in such situation the value of free supplies is not includable in the assessable value. The Asstt. Controller of Legal Metrology has informed the appellants regarding legal requirements in respect of combination packages but in order to decide this issue it is sufficient that the products are covered under Section 4A and also the Standards of Weights and Measures Act. Since the Revenue has not contested that the products in question are covered under Section 4A and Standards of Weights and Measures Act, we hold that the products are assessable under Section 4A. In view of the decided case laws, there will not be any duty liability on the gel supplied free, hence there is no merit in the impugned order. Therefore, we allow the appeal with consequential relief."

Therefore, we hold that the value of bought items (supplied free of cost) shall not form the part of assessable value of staplers.

14. We further find as the issue is debatable in nature, therefore we hold that the extended period of limitation is not invokable.

15. In that circumstance, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the court)

(ANIL G.SHAKKARWAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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